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No. 83-1724

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LOUISE GRIFFIS,

Petitioner,

v.

DELTA FAMILY CARE DISABILITY AND SURVIVORSHIP PLAN and DELTA FAMILY CARE MEDICAL PLAN,

Respondents.

On a Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT OF THE CASE

Petitioner was the wife of Delta Air Lines, Inc. (Delta) employee Hugh Griffis, who died August 1, 1978. Following Griffis' death, Petitioner began receiving survivor benefits from the Delta Family-Care Disability and Survivorship Plan (D&S Plan) and the Delta Family-Care Medical Plan (Medical Plan) (collectively referred to as the Plans). Both Plans provide that for persons such as Petitioner, benefits from the Plans cease upon remar-

riage. Petitioner remarried in August, 1980.[1] She subsequently had this remarriage annulled and sought reinstatement of her benefits from the Plans. Petitioner was denied reinstatement upon the grounds that benefits from the Plans ceased upon remarriage and that determination was unaffected by the subsequent annullment.

The Plans are both non-negotiated, non-contributory ERISA welfare benefit plans which cover all of Delta's non-pilot employees.[2] The Plans provide that the Administrative Committee of Delta, who is the named fiduciary for administration of the Plans, has the sole authority to interpret Plan terms and determine eligibility for benefits. Following the initial denial of her claim, Petitioner pursued both levels of the Plans' administrative remedies provided under Section 503 of ERISA (29 U.S.C. § 1133) seeking reinstatement of her benefits. Upon its review of her claim, the Administrative Committee determined that Petitioner had remar-

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[1] Petitioner was aware that remarriage severed her eligibility for benefits from the D&S Plan and Medical Plan since prior to her marriage to Newell, she had contacted Delta's Group Insurance Department and was so informed.

[2] The D&S Plan, under which the survivor income benefit was paid, is a voluntary employee benefit association, tax exempt under Section 501(c)(9) of the Internal Revenue Code. Contrary to Petitioner's characterization, the Plans are not pension benefit plans as defined under ERISA and are not qualified under Section 401(a) of the Code. Retirement benefits are provided to non-pilot Delta employees, and in certain cases their survivors, from the Delta Family-Care Retirement Plan (Retirement Plan), which is a separate plan from either the D&S Plan or the Medical Plan. It is important to note that the survivor benefits involved in this suit are not part of the joint and survivor or early survivor annuity required to be offered under pension plans qualified under Section 401(a) of the Code. Indeed, Petitioner has received, since the time of her first husband's death, a monthly survivor benefit from the Retirement Plan under the preretirement survivor option of that Plan. This benefit was unaffected by Petitioner's remarriage, since it continues even upon remarriage and she will continue to receive this benefit from the Retirement Plan until her death.

ried as that term is used in the Plan.[3] The Committee found that it was the intent of the Plans to sever benefits to a surviving spouse upon remarriage, and such benefits were not to be reinstated even if that marriage was later annulled or otherwise void under state law. In affirming the determination that Petitioner had remarried under the Plan, the Committee was concerned that recognizing annulments as reinstating the right to benefits from the Plans would jeopardize their financial integrity and efficient operation and would expose them to potential abuse.[4] Petitioner subsequently filed suit against the Plans seeking reinstatement of benefits.[5]

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[3] There is no basis for Petitioner's statement that the Committee recognized that Petitioner had not remarried as that term is used in the Plan. In fact, the Committee made just the opposite determination. Similarly, there is no basis for Petitioner's statement that the Committee determined that the term "remarries" required the status of a legally binding obligation.

[4] Petitioner complains that there was no evidence before the lower courts that the Committee based its decision upon these grounds. That is simply not true. The district court had before it to support the Plans' Motion for Summary Judgment an Affidavit of James W. Callison, a member of the Committee, which clearly established the Committee's concerns. Petitioner also complains that the Committee did not have the expertise to make determinations concerning the financial impact of recognizing annulments on the Plans. At the time Petitioner's claim was reviewed, the Committee consisted of Delta's President, Vice Chairman of the Board, and Senior Vice Presidents including the Company's chief financial officer, all of whom had been on the Committee for several years. These executives were certainly familiar with the Plans' funding needs.

[5] Petitioner's Complaint brought under Section 502 of ERISA, sought reinstatement of the denied benefits and made no allegation of breach of fiduciary duty or non-compliance with any statutory or regulatory requirements.

SUMMARY OF ARGUMENT

The question Petitioner presents for review concerns the appropriate standard of review to be used by the district courts when reviewing the actions of ERISA welfare plan administrators in awarding benefits. Since Petitioner did not raise this issue in the lower courts, and indeed took a different position from that which she now takes, the Petition for Certiorari should be denied. In any event, the issue which Petitioner seeks to raise is not of such importance as to warrant the attention of this Court. It is well settled that the arbitrary and capricious standard is the correct standard of judicial review for courts to use in reviewing actions of ERISA plan administrators.

ARGUMENT

I. Petitioner Is Precluded From Questioning the Appropriate Judicial Standard of Review Before This Court Since This Issue Was Not Raised in the Courts Below.

The question which Petitioner asks this Court to address concerns the appropriate standard of review to be used by the district courts in reviewing the actions of ERISA welfare plan administrators in awarding benefits. She now argues that the arbitrary and capricious standard of review used by the district court in reviewing the Committee's decision was improper. This position, however, is the exact opposite of what she argued before both the district court and the court of appeals. It is well settled that issues and arguments not raised in the lower courts cannot normally be raised for the first time before the Supreme Court. *Tacon v. Arizona*, 410 U.S. 351 (1973); *Rogers v. Herman Lodge*, 458 U.S. 613 (1982); *Ramsey v. United Mine Workers*, 401 U.S. 302 (1971); *Adickes v. Kress and Co.*, 398 U.S. 144 (1970).

In her Motion for Summary Judgment, Petitioner submitted that the controlling issue in the case was whether

the Plans had acted arbitrarily or capriciously in denying reinstatement of benefits. Similarly, in the court of appeals, Petitioner did not raise any new issues and one of her primary contentions was that the district court had not followed the arbitrary or capricious standard as it should have done, but had conducted a *de novo* review of Petitioner's claim (which the court had not done). Petitioner's failure to question the standard of review in the lower courts, and indeed her acknowledgement in those courts that the arbitrary or capricious standard was the correct standard of review should preclude her from arguing that the district court should not have used the arbitrary or capricious standard in reviewing the Committee's interpretation of the Plan's terms. Since the Petition for Certiorari does not address any other issues, it should be denied.

II. The Petition for Certiorari Does Not Raise Any Issues Worthy of Consideration By This Court.

Contrary to Petitioner's assertion, there is no confusion as to the correct standard of judicial review for the district courts to apply when reviewing a plan fiduciary's interpretation of plan terms. In such cases, the arbitrary or capricious standard is universally applied. See, *Miles v. New York Teamsters Pension Fund*, 698 F.2d 593 (2nd Cir. 1983), cert. denied, —— U.S. ——, 104 S.Ct. 105 (1983); *Elser v. IAM National Pension Fund*, 684 F.2d 648 (9th Cir. 1982), cert. denied, —— U.S. ——, 104 S.Ct. 67 (1982); *Quinn v. Burlington Northern Pension Plan*, 664 F.2d 675 (8th Cir. 1981), cert. denied, 456 U.S. 928 (1982); *Kolata v. United Mineworkers Pension Trust*, 533 F.Supp. 313 (S.D. W.Va. 1982), affirmed 696 F.2d 990 (4th Cir. 1982) Opinion reported at 3 Employee Benefit Cases 2459 (1982); *Challenger v. Ironworkers Local No. 1*, 619 F.2d 645 (7th Cir. 1980); *Bayles v. Central States, Southeast and Southwest Areas Pension Fund*, 602 F.2d 97 (5th Cir. 1979).

The arbitrary or capricious standard of review insures that courts will not become overly involved in the administration of private employee benefit plans and protects participants from arbitrary actions by plan administrators. So long as the fiduciaries' interpretation of a plan term is reasonable, regardless of whether it is the interpretation urged by claimant, it should be upheld by the courts. This limited review insures that the courts will not substitute their interpretation of the plan for that of the plan administrator, which in turn encourages uniform and consistent administration of the plan for all participants.

The arbitrary or capricious standard of review is also consistent with Congressional intent. The House Conference Report accompanying ERISA[6] specifies that ERISA civil actions are to be regarded in similar fashion to those brought under Section 301 of the Labor Management Relations Act of 1947. At the time ERISA was passed, the federal courts had long applied the arbitrary or capricious standard in the LMRA context. See, *Roark v. Lewis*, 401 F.2d 425 (D.C. Cir. 1968); *Miniard v. Lewis*, 387 F.2d 864 (D.C. Cir. 1967), cert. denied, 393 U.S. 873 (1968); *Haynes v. Lewis*, 298 F. Supp. 331 (D. D.C. 1969). The reference to Section 301 in the Conference Report clearly indicates that Congress intended judicial review of plan administrators' interpretation of plan terms to be limited to a determination of whether such decision was arbitrary or capricious.

Petitioner does not offer any alternative to the arbitrary or capricious standard other than some nebulous ERISA fiduciary requirement which she does not define. As a practical matter, however, the only alternative to the arbitrary or capricious standard is for the district

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[6] Joint Explanatory Statement of the Committee of Conference, H.R. Conference Report No. 93-1280, 93rd Congress, Second Session, Reprinted in 1974, U.S. Code Congressional and Administrative News, pp. 4639, 5106-07.

court to substitute its interpretation of the plan for that of the plan administrator. This would not only create an incredible burden on the district courts, but also would deprive plan fiduciaries of one of their primary responsibilities, that of interpreting plan terms. For nationwide plans such as the D&S Plan and Medical Plan such a policy would lead to different interpretations of the same term, and thus disparate treatment of similarly situated participants. Such a result would be unfair to all participants and violative of ERISA.

CONCLUSION

The Petition for Certiorari should be denied since the issues addressed in this Petition were not raised in the courts below, and in any event are not worthy of consideration by this court on Writ of Certiorari.

Respectfully submitted,

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